

Implementing Complex New Pension Disclosure Rules: Part 2

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Part 2 of this two-part article explains how to satisfy new requirements for disclosing the relative value of optional distribution forms. It also includes a sample participant-specific disclosure form. Part 1 explained that the IRS has issued final regulations that expand disclosure obligations for retirement plans whose distributions are subject to QJSA and QPSA disclosure rules. It explained what plans and distributions are subject to the new disclosure regulations, described required QPSA disclosures, and began to describe the financial effect of electing optional distribution forms.

Required QJSA Disclosures, *cont'd*

Relative values of optional forms.

The administrator of a DB plan must describe the relative value of each disclosed optional form of benefit as compared to the value of the QJSA. The description must provide a meaningful comparison of the relative economic values of each optional form of benefit and the QJSA, without the participant having to make calculations using interest or mortality assumptions.

Option to provide participant-specific numbers or estimates, or generally applicable information.

The administrator has the option to provide the relative value disclosure by providing either participant-specific comparisons, or generally applicable comparisons.

If the administrator opts to provide participant-specific comparisons, it can provide either actual numbers, based on the actual age and benefit of the participant, or estimates. If the administrator provides estimates, the QJSA notice must:

- Identify the estimate.
- Explain that the administrator will, upon request, provide a more precise calculation.

If a more precise calculation materially changes the relative value of an optional form compared to the value of the QJSA, the revised relative value must be disclosed (even if the more precise calculation does not affect the financial effect of selecting the optional form). For example, if using a spouse's actual age affects the relative value of lump sum and QJSA forms, revised relative values must be disclosed, even if the actual value of the lump sum does not change. The regulations provide the same examples of permissible estimation techniques that applied for purposes of disclosing the financial effect of electing optional forms (e.g., assumptions about spouse's age, data in effect prior to the ASD, and estimated interest rate).

If the administrator opts to provide generally applicable comparisons, the QJSA notice must include a chart or other comparable device showing the generally applicable relative value of each disclosed optional form of benefit. The chart and accompanying explanation must:

- Show, in a series of examples, the relative values of the optional form of benefit payable to a hypothetical participant at a representative range of ages.
- Use reasonable assumptions for the age of the hypothetical participant's spouse and any other variables affecting the financial effect of the optional form of benefit.
- Include a general statement describing the effect of significant variations in the assumed ages or other variables on the comparison of the relative value of the optional form of benefit to the value of the QJSA.
- Offer to provide, upon request, a comparison of relative values that is specific to the participant (e.g., based on the participant's actual age and benefit).
- Describe how a participant may obtain participant-specific additional information.

Options for converting to a single form.

The administrator has the option to compare the relative values of optional forms and the QJSA in different ways, after converting forms being compared to a single form (taking into account the time value of money and life expectancies). For example:

- The administrator can convert forms being compared to a present value lump sum, then either (i) express the converted present value of the optional form as a percentage or factor of the converted present value of the QJSA, or (ii) simply express the converted present value of both the optional form and the QJSA.
- The administrator can convert optional forms to a QJSA form (i.e., payable at the same time and under the same conditions as the QJSA), and express the QJSA annuity value of each form.

Options for picking and disclosing actuarial assumptions.

The administrator has the option to use various actuarial assumptions in converting optional forms to a single form for comparison of relative values. In general, the administrator must use a single uniformly applied set of interest and mortality assumptions for performing all conversions, but may use any assumptions that are "reasonable" (e.g., no requirement that assumptions actually be used for purposes of performing payment calculations).

However, if an optional form of benefit is subject to [Code Sec. 417\(e\)\(3\)](#) (e.g., a single sum or decreasing annuity), the administrator must use either (i) GATT assumptions (i.e., interest rate based on 30-year Treasuries and IRS-approved mortality table), or (ii) other reasonable interest or mortality assumptions used under the plan to calculate the amount payable under the [Code Sec. 417\(e\)\(3\)](#) optional form.

The administrator must also satisfy the following disclosure requirements relating to the use of actuarial assumptions:

- Explain the concept of relative value, by stating that (i) the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, (ii) the relative value comparison is made by converting the value of optional forms presently available to a common form, (iii) the conversion is performed using interest and life expectancy assumptions, (iv) all comparisons provided are based on average life expectancies, and (v) the relative value of payments ultimately made under an annuity optional form will depend upon actual longevity.
- Generally, disclose the interest rate used to develop numerical comparisons. This requirement always applies for optional forms subject to [Code Sec. 417\(e\)\(3\)](#). It also applies to other optional forms, unless they can be grouped on account of having a relative present value within 5 percentage points of the relative present value of the QJSA.
- Offer to disclose, upon request, any undisclosed actuarial assumptions used to calculate the relative value of optional forms of benefit (e.g., mortality assumptions, and interest rates not provided on account of grouping of non- [Code Sec. 417\(e\)\(3\)](#) optional forms within 5 percentage points of the QJSA).

The preamble to the regulations includes a helpful observation that an administrator need not use the same assumptions for purposes of both demonstrating the relative value of optional forms, and demonstrating that a plan's QJSA form is at least as valuable as any other optional form of benefit (a separate requirement under [Reg. § 1.401\(a\)-20](#), Q&A-16). However, if an administrator shows an optional form as being relatively more valuable than a QJSA form, he or she may want to confirm that the plan satisfies the "at least as valuable" requirement using other reasonable actuarial assumptions.

Options for choosing the comparative QJSA form.

The administrator has several options for choosing the QJSA form to which other optional forms will be compared. For a married participant, the administrator may provide a comparison to a married-participant QJSA (e.g., a 50% joint and survivor annuity). For an unmarried participant, the administrator may provide a comparison to an unmarried-participant QJSA (e.g., a single life annuity).

The administrator may also have two other options. If a plan permits married participants to choose an unmarried-participant QJSA form (e.g., a single life annuity optional form), the administrator may compare optional forms to an unmarried-participant QJSA, whether the QJSA notice is provided to unmarried or married participants. Alternatively, if the plan permits unmarried participants to choose a married-participant QJSA (e.g., a 50% joint and survivor annuity, with survivor benefits to a non-spouse beneficiary), the administrator may compare optional forms to a married-participant QJSA, whether the QJSA notice is provided to married or unmarried participants.

Options for grouping similar optional forms.

The administrator may have several options for grouping optional forms with similar relative values.

Within 5 percentage points.

If two or more optional forms (when expressed as a lump sum present value) do not vary (as a percentage of the lump sum present value of the QJSA form) by more than 5 percentage points, the administrator can treat these optional forms as having approximately the same value. In general, the QJSA notice using this grouping option must:

- Disclose the relative value of one of the grouped optional forms. If one of the grouped optional forms is a lump sum form, the administrator must disclose the relative value of the lump sum distribution form. If none of the grouped optional forms is a lump sum form, the administrator may disclose the relative value of any one of the optional forms. The regulations do not expressly require that the relative value be expressed as a lump sum present value. This appears to mean that optional forms that satisfy the 5% rule on a present value basis may be treated as having approximately the same relative value, even if their relative value is expressed, for example, on a QJSA basis (rather than a present value lump sum basis).
- State that the other optional forms of benefit in the group are of approximately the same value as the disclosed relative value.

Alternatively, if a lump sum form is not among the grouped optional forms, the grouped optional forms may be described as having an approximate relative value equal to any representative value that is not higher than the highest relative value of any grouped optional form nor lower than the lowest relative value of any grouped optional form.

95% of married-participant QJSA's value.

If the value of each optional form is being compared to a married-participant QJSA, any optional forms that have a lump sum present value that is at least 95% of the lump sum present value of the married-participant QJSA can be grouped together. The administrator may either describe the grouped forms as being approximately equal in value to the QJSA, or describe the grouped forms and the QJSA as being approximately equal in value.

95% to 102.5% of unmarried-participant QJSA's value.

If the value of each optional form is being compared to a single life annuity (e.g., an unmarried-participant QJSA), any optional form that has a lump sum present value that is at least 95%, but not greater than 102.5%, of the lump sum present value of the single life annuity can be grouped together. Again, the administrator may either describe the grouped forms as being approximately equal in value to the QJSA, or describe the grouped forms and the QJSA as being approximately equal in value.

Other optional form features.

The administrator must describe any other material features of each disclosed optional form of benefit.

Conclusion

Plan administrators-particularly of DB plans with multiple distribution options-will need to move quickly in order to timely revise and update their distribution notices and procedures to comply with these complex new rules. Administrators and plan sponsors will likely need both actuarial and legal input in order to implement the new rules, and will need to compare and choose among the various disclosure approaches available. Plan amendments might also be required in some cases, e.g., if existing plan language details obsolete disclosure rules.

Sample Participant-Specific QJSA Notice

This is a sample QJSA notice designed to provide participant-specific disclosures. Of course, administrators would need to complete the samples to reflect specific plan provisions and to implement desired disclosure approaches, where options are available.

[] Plan

DISTRIBUTION NOTICE AND EXPLANATION

This notice provides information to you about your distribution options under the Plan. You have the right to defer a distribution of your benefits until the later of age 62 or your normal retirement age under the Plan.

Your benefits will be paid to you in the normal annuity form, at such times as provided for in the Plan, unless you elect to waive this form of benefit (with your spouse's consent if you are married).

If you are not married, the normal annuity form is a Single Life Annuity, which provides you with monthly payments for your life and no payments after your death. If you are married, the normal annuity form is a []% Joint and Survivor Annuity which provides you with a reduced monthly payment for your life, and, when you die, a monthly payment for your spouse's life equal to []% of the monthly payment you received prior to your death. The amount of the reduction is determined as follows: [].

You may elect not to receive your benefits in the normal annuity form, and instead choose to receive your benefits in one of the optional distribution forms listed below. If you are married, your spouse must consent to your election in writing, in the presence of a notary public [or a Plan representative]. You may revoke this election before your benefits commence. Your spouse does not need to consent to such revocation. A revocation of an optional form will result in the distribution of your benefits in the normal annuity form.

Your optional forms are as follows:

- Optional Form 1. Under this optional form, you and your spouse [or other beneficiary] will receive payments, determined as follows: []. You are eligible for this optional form if []. The financial effect on your benefit of electing this optional form will be []. Other material features of this optional form are [].
- [Repeat for additional optional forms.]

Annuity forms of benefit will be provided by purchasing an annuity contract from an insurance company with your account balance under the Plan. [Include only if a DC plan.]

The optional forms described above include only those optional forms that are generally available to Plan participants. You can request information about other optional forms available to you by contacting []. [Include only if disclosures limited to generally-available forms.]

In the chart below, the relative value of each optional form of benefit is compared to the value of the normal form of benefit for a [married or unmarried] participant. The relative

value comparison is intended to allow you to compare the total value of distributions paid in different forms. The relative value comparison is made by converting the value of optional forms presently available to the following common form: []. The conversion is performed using interest and life expectancy assumptions. All comparisons provided are based on average life expectancies. The relative value of payments ultimately made under an annuity optional form will depend upon actual longevity. The interest rates used to develop relative value comparisons are as follows: [] [Note: Interest rate disclosure is not required for non-417(e)(3) forms, if optional forms are within 5 percentage points of the relative value of the normal annuity form.] Other actuarial assumptions used to calculate the relative value of optional forms are as follows: []. You can request details regarding other actuarial assumptions used to calculate the relative value of optional forms by contacting []. [Include only one of the preceding two sentences.]
[Add relative value chart; grouping may be available; omit relative value disclosure if a DC plan.]

The explanation of the financial effect on your benefit of electing optional forms and the relative value of benefits under the optional forms was based on the following estimates: []. You can request more precise calculations by contacting []. [Include only if estimates used.]

If you received this notice and explanation through an electronic medium (e.g., email), you may request and receive the notice on a written paper document at no charge. You can request this paper document by contacting []. [Note: The new regulations do not yet address electronic disclosure. This language would satisfy prior regulations regarding electronic disclosure.]

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